

## REMARKS

Claims 118-140 are presently pending in the application.

### Rejection Under 35 U.S.C. § 112, second paragraph.

The Examiner has rejected claims 118-140 under 35 U.S.C. § 112, second paragraph, asserting that the claims are indefinite because the “meaning and scope” of the composition is unclear as the specification discloses both “pharmaceutical compositions” and “compositions”. The applicants respectfully traverse the rejection.

The claims are not rendered unclear by the recitation in the preamble that the applicant claims “a composition comprising . . .”, even though ‘subtypes’ of compositions may be described in the specification. A person of skill in the art could easily determine the metes and bounds of the claim based upon a review of the specification - - namely that the claim properly encompasses all compositions that include the recited compound, regardless of the use to which the composition is put (pharmaceutical, industrial, and commercial, decorative). See 35 U.S.C. § 101 (listing “compositions of matter” as a statutory category of invention, presumably including all compositions claimed in the more than six million issued U.S. patents). No ‘use’ limitation is necessary; it is clear what compositions the invention includes.

Accordingly, it is respectfully requested that the Examiner reconsider and withdraw the 35 U.S.C. § 112, second paragraph, rejection.

### Rejection Based Upon the Judicially Created Doctrine of Double Patenting

In Paper No. 15, the Examiner has rejected claims 118-140 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,262,257 (“the ‘257 patent”). Applicants respectfully traverse this rejection.

Conclusion

In view of the preceding, it is respectfully submitted that all of the pending claims are in compliance with § 112, patentable, distinct from the prior art of record, and in condition for allowance. A Notice of Allowance is respectfully requested.

In the event that the Examiner has any question or comments, he is requested to contact the applicants' representative at the indicated telephone number.

Respectfully submitted,

**PHILIP A. GALE *et al.***

29 July 2003  
(Date)

By:

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KAB:SMK:cmb  
Enclosure  
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FOLLOW-ON DOCUMENT INDEX SHEET

**INCOMING**

\_\_\_\_\_ ACPA \_\_\_\_\_  
Continuing Prosecution Application

\_\_\_\_\_ AP.B \_\_\_\_\_  
Appeal Brief

\_\_\_\_\_ C680 \_\_\_\_\_  
Request for Corrected Notice/Allowance

\_\_\_\_\_ C.AD \_\_\_\_\_  
Change of Address

\_\_\_\_\_ CFILE \_\_\_\_\_  
Request for Corrected Filing Receipt

\_\_\_\_\_ COCIN \_\_\_\_\_  
Papers filed re Certificate of Corrections

\_\_\_\_\_ CRFD \_\_\_\_\_  
Computer Readable Form Defective

\_\_\_\_\_ CRFE \_\_\_\_\_  
Computer Readable Form 'ENTERED'

\_\_\_\_\_ EABN \_\_\_\_\_  
Request for Express Abandonment

\_\_\_\_\_ ELC. \_\_\_\_\_  
Response to Election/Restriction

\_\_\_\_\_ IFEE \_\_\_\_\_  
Issue Fee Transmittal PTOL 85 B

\_\_\_\_\_ IRFND \_\_\_\_\_  
Refund Request

\_\_\_\_\_ L\_RIN \_\_\_\_\_  
Any Incoming to L&R

\_\_\_\_\_ N417 \_\_\_\_\_  
Copy of EFS Receipt Acknowledgement

\_\_\_\_\_ N/AP \_\_\_\_\_  
Notice of Appeal

\_\_\_\_\_ PA.. \_\_\_\_\_  
Change in Power of Attorney

\_\_\_\_\_ PC/I \_\_\_\_\_  
Power to Make Copies or to Inspect

\_\_\_\_\_ PEF. \_\_\_\_\_  
Pre-Exam Formalities Response

\_\_\_\_\_ PEFRRREISS \_\_\_\_\_  
Pre-Exam Formalities Reissue Response

\_\_\_\_\_ PEFRSEQ \_\_\_\_\_  
Pre-Exam Formalities Sequence Reply

**INCOMING**

\_\_\_\_\_ LET. \_\_\_\_\_  
Misc. Incoming Letter

\_\_\_\_\_ IMIS \_\_\_\_\_  
Miscellaneous Internal Document

\_\_\_\_\_ PGEA \_\_\_\_\_  
Req Express Aband to avoid Publication

\_\_\_\_\_ PGA9 \_\_\_\_\_  
Req for Corrected Pat App Publication

\_\_\_\_\_ PGREF \_\_\_\_\_  
Req for Refund of Publication Fee Paid

\_\_\_\_\_ PROTEST \_\_\_\_\_  
Protest Documents Filed by 3<sup>rd</sup> Party

\_\_\_\_\_ PROTRANS \_\_\_\_\_  
Translation of Provisional in Nonprovisional

\_\_\_\_\_ REM \_\_\_\_\_  
Applicant Remarks in Amendment

\_\_\_\_\_ RESC \_\_\_\_\_  
Rescind Non-Publication Request

\_\_\_\_\_ RETMAIL. \_\_\_\_\_  
Mailed Returned by Post Office

\_\_\_\_\_ XT/ I \_\_\_\_\_  
Extension of Time filed separately

**APPL PARTS**

\_\_\_\_\_ 371P \_\_\_\_\_  
PCT Papers in a 371 Application

\_\_\_\_\_ A... \_\_\_\_\_  
Amendment Including Elections

\_\_\_\_\_ A.NE \_\_\_\_\_  
After Final Amendment

\_\_\_\_\_ A.PE \_\_\_\_\_  
Preliminary Amendment

\_\_\_\_\_ ABST \_\_\_\_\_  
Abstract

\_\_\_\_\_ ADS \_\_\_\_\_  
Application Data Sheet

\_\_\_\_\_ AF/D \_\_\_\_\_  
Affidavit or Exhibit Received

\_\_\_\_\_ APPENDIX \_\_\_\_\_  
Appendix

**APPL PARTS**

\_\_\_\_\_ ARTIFACT \_\_\_\_\_  
Artifact

\_\_\_\_\_ CLM \_\_\_\_\_  
Claim

\_\_\_\_\_ COMPUTER \_\_\_\_\_  
Computer Program Listing

\_\_\_\_\_ CRFL \_\_\_\_\_  
CRF Transfer Request

\_\_\_\_\_ CRFS \_\_\_\_\_  
Computer Readable Form Statement

\_\_\_\_\_ DIST \_\_\_\_\_  
Terminal Disclaimer Filed

\_\_\_\_\_ DRW \_\_\_\_\_  
Drawings

\_\_\_\_\_ FOR \_\_\_\_\_  
Foreign Reference

\_\_\_\_\_ FRPR \_\_\_\_\_  
Foreign Priority Papers

\_\_\_\_\_ IDS \_\_\_\_\_  
IDS Including 1449

\_\_\_\_\_ NPL \_\_\_\_\_  
Non-Patent Literature

\_\_\_\_\_ OATH \_\_\_\_\_  
Oath or Declaration

\_\_\_\_\_ PET. \_\_\_\_\_  
Petition

\_\_\_\_\_ PGPUB DRAWINGS \_\_\_\_\_  
Box PG Pub Drawings

\_\_\_\_\_ SEQLIST \_\_\_\_\_  
Sequence Listing

\_\_\_\_\_ SPEC \_\_\_\_\_  
Specification

\_\_\_\_\_ SPEC NO \_\_\_\_\_  
Specification Not in English